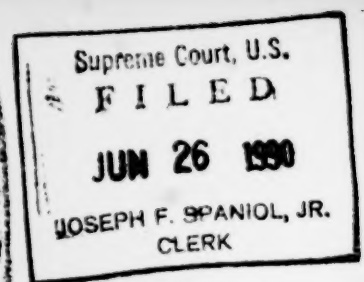


No. 90-129

90-129



IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1989

HENRY T. KANE - PETITIONER

v.

SECRETARY OF THE COMMONWEALTH OF
PENNSYLVANIA, Mr. CHRISTOPHER LEWIS

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO
PENNSYLVANIA SUPREME COURT

PETITIONER (215) 634- 4957

425- 6794

HENRY T. KANE
2675 Emerald St.
Phila., Pa. 19125

PETITION FOR CERTIORARI & APPENDIX



QUESTIONS PRESENTED

1. Should the U.S. Supreme Court order Mr. Christopher Lewis the Pa. Secretary of the Commonwealth to set aside the nomination of Ralph Acosta, and place the name of Henry T. Kane on the November ballot for the office of State Representative?

2. Should the U.S. Supreme Court correct the disparity between the way Pa. election laws are applied to challengers, and the way Pa. election laws are applied to incumbants?

3. Can the Pa. Supreme Court overturn a lower court decision without reasoning ?
(no opinion, or ruling has been issued in this case)

4. Can the Pa. Supreme Court ignore the state laws that require 300 signatures just to keep an incumbant on the ballot?

5. Should the Pa. Supreme Court be allowed to ignore my Federal Right of Due Process?

TABLE OF CONTENTS

Page #

QUESTIONS PRESENTED	- - - -	2
JURISDICTIONAL STATEMENT	- - - -	4
REASON FOR GRANTING CERTIORARI	- -	4
STATEMENT OF THE CASE	- - - -	5- 6
ARGUMENT	- - - - - - - - - -	7
AUTHORITIES RELIED UPON FOR DUE PROCESS		
- - - - -	-	8- 10
RELATED CASE	- - - - -	10
CONCLUSION	- - - - -	11
APPENDIX --BEGINS	- - - - -	12
OPINION OF COMMONWEALTH COURT		13- 39
ORDER OF COMMONWEALTH COURT	-	40- 41
LETTER FROM Pa. STATE SUPREME COURT		42-43
ORDER FROM Pa. STATE SUPREME COURT		43-44
LETTER FROM Pa. STATE SUPREME COURT	-	
LETTER OF MAY 10th,	- - - - -	45-46
FINAL ORDER OF MAY 10th	- -	
FROM Pa. STATE SUPREME COURT	- - -	47
CERTIFICATE OF SERVICE / VERIFICATION		48

JURISDICTIONAL STATEMENT

The authority of this court is pursuant to Article III Section 2 of the U.S. Constitution.

TIME ELEMENT OF THE JURISDICTION:

The State Supreme Court order of May 10 - 1990, and this petition being filed in the month of June of the same year falls within the required Ninety Day limit.

REASON FOR GRANTING CERTIORARI

The reason for granting Certiorari is the 14th Amendment right to due process.

THERE HAS BEEN NO RULING IN THIS CASE AT THIS PRESENT TIME : Therefore the jurisdictional authority of the Pa. State Supreme Court to overturn the lower court is defective.

When states create appellate rights the process cannot be arbitrary, unfair, or rendered a nullity. See Pennywell v. Rushen, And Sarelas v. Sheehan.

STATEMENT OF THE CASE

A State Representative candidate in Pennsylvania must file the signatures of 300 voters that will be eligible to vote for that candidate in the next General Primary.

More than that there are legal details involved, and if the candidate can not handle the legal details the candidate should not remain a candidate.

This is a case of an incumbent that inter alia did not make sure that the signers were included in the venue of his legislative district, and was set aside by Commonwealth Court (Statewide appellate court for civil matters) the trial court judge wrote a sixteen page opinion that left no doubt about whether or not the candidate was in compliance with Pa. election law. (he did not meet the 300 threshold signature requirement.)

STATEMENT OF THE CASE CONTINUED

On appeal to the Pa. Supreme Court the Supreme Court issued a stay of the Commonwealth Court Order.

The stay was followed by what appears to be a sue sponte overturning of the court below's Order.

Petitioner is requesting this honorable court to review the state court proceeding, and if it finds the incumbant to be advantaged by disparity in Pa. election law application, correct the decision of Pa. Supreme Court, and impose equal justice under the law.

ARGUMENT

This case was overturned on May tenth, nineteen ninety, and the opinion that was to follow did not!

Further Justice McDermott walked off the bench during the argument in open court on May 7th, 1990 and a notation on the court order would be seen as an attempt to make clear that he did not want to be seen as part of any wrongdoing.

If there was a reason that could go on the record for the reversal of the case it should have been rendered in the last month. It would be appropriate to inform not only the appellee, but also the court below as to the reasoning of the reversal of its decision.

AUTHORITIES RELIED UPON FOR DUE PROCESS

ARTICLE III Section 2 - The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between citizens of different States, between citizens of the same state claiming lands under grants of different States, and between a state, or the citizens thereof, and foreign States, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction.

AUTHORITIES CONTINUED

In all other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

U.S. CONSTITUTION ARTICLE 14

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

AUTHORITIES CONTINUED

Pennywell v. Rushen, 706 F 2d 355

(9th Cir. 1983)

Sarelas v. Sheehan, 326 F, 2d 490

(7th Cir.)

Section 3477 of the Pennsylvania
election code.

Under 3477 the Pa. State Supreme Court
can declare the person with the greatest
number of legal votes to be certified to
the Secretary of the Commonwealth as
nominated to an office.

RELATED CASE

REGINALD B. SNYDER

v.

SECRETARY OF THE COMMONWEALTH

OF PENNSYLVANIA Mr. CHRISTOPHER LEWIS

AN INSTANT MATTER BEFORE THIS

HONORABLE COURT AS NO. 89- 1703

CONCLUSION

Petitioner requests the Supreme Court of the United States by Judges of said court:

To review enclosed information and upon agreement that appellee was denied a proper due process (that the Pa. Supreme Court overturned a direct appeal without the proper authority (no ruling)) , and upon agreement that appellant has not complied with Pennsylvania law pertaining to nomination petitions, issue an order to the Pa. Secretary of the Commonwealth (Christopher Lewis) removing the name Ralph Acosta, and certifying the name of Henry T. Kane as the candidate with the largest number of legal votes.

APPENDIX

THE FOLLOWING APPENDIX INCLUDES

OPINION FROM JUDGE BARBIERI

ORDER FROM JUDGE BARBIERI

ORDER FROM STATE SUPREME COURT

STAY, AND ORAL ARGUMENT

ORDER FROM STATE SUPREME COURT

OVERTURNING COMMONWEALTH

COURT'S DECISION

. IN RE: NOMINATION PETITION OF :
RALPH ACOSTA AS DEMOCRATIC :
CANDIDATE FOR OFFICE OF :
MEMBER OF THE GENERAL :
ASSEMBLY FOR THE 180th :
DISTRICT, :
HENRY T. KANE, :
Petitioner :

: IN THE COMMONWEALTH COURT OF
: PENNSYLVANIA
:
: No. 103 Misc. Dkt. 1990

BEFORE: HONORABLE ALEXANDER F. BARBIERI,
Senior Judge

HEARD: March 26 and 29, 1990

OPINION NOT REPORTED

Before this Court is a petition by Henry T.Kane (Petitioner) to set aside the nomination petition of Ralph Acosta (Candidate), candidate for the Democratic nomination as Representative in the General Assembly for the 180th District. Both Petitioner and Candidate were represented by Counsel at the various hearings held on this matter.

Initially, Candidate argues that Petitioner's Petition to Set Aside Candidate's Nomination Petition must be dismissed as it was served upon the Secretary of the Commonwealth after the statutory deadline outlined in Section 977 of the Pennsylvania Election Code (Code), Act of June 3, 1937, P.L. 1333, as amended, 25 P.S. §2937. Section 977 of the Code provides in pertinent part:

All nomination petitions and papers received and filed within the periods limited by this act shall be deemed to be valid, unless, within seven days after the last

day for filing said nomination petition or paper, a petition is presented to the court specifically setting forth the objections thereto, and praying that the said petition or paper be set aside. A copy of said petition shall, within said period, be served on the officer or board with whom said nomination petition or paper was filed.. The office of the Prothonotary of the Commonwealth Court and the office of the Secretary of the Commonwealth and the various offices of prothonotary of the court of common pleas shall be open between the hours of eight-thirty o'clock A.M. and five o'clock P.M. on the last day to withdraw after filing nomination petitions and on the last day to file objections to nomination petitions.

The parties in this case stipulated to the fact that Petitioner served his objections to Candidate's nomination petition on the Secretary of the Commonwealth by first class mail on March 13, 1990, which was the seventh day after the last day for the filing of nomination petitions. Candidate

argues that the Code contemplates in person service of Petitioner's objections rather than mail service because of language in the statute regarding business hours. In the alternative, Candidate argues that even if mail service was allowed, Petitioner's objections to the nomination petition were not timely filed because under Pennsylvania Rule of Civil Procedure (Pa.R.C.P.) No.403, service is complete upon delivery of the mail which occurred on March 19,1990 in this case. We find no merit to either of Candidate's contentions.

Section 977 of the Code does not specify how service is to be made on the Secretary of the Commonwealth. The fact that the statute states the hours in which the Secretary of the Commonwealth's office is to remain open does not contemplate that the only service allowed on the Secretary under the code is personal service. Accordingly, we find that service by mail is not precluded by the Code.

Furthermore, service by mail is not precluded by the Rules of Civil Procedure. While it is true that Pa.R.C.P. No.422 (a) requires that service of original process upon an officer of the Commonwealth be made at the office of the defendant by handing a copy to the person in charge thereof, the Secretary of the Commonwealth is not a defendant in this matter. The purpose of serving a copy of a petitioner's objections on the Secretary of the Commonwealth is merely "to advise the official with whom the nomination petition was filed that objections thereto had been made so that the name of the candidate whose petition is attacked would not be placed on the ballot until the controversy is finally determined," Beynon Appeal, 370 Pa. 532, 536, 88 A.2d 789, 791-792 (1952), and not to institute a legal proceeding against the Secretary.

Because the Secretary of the Commonwealth is not a party to this proceeding, the proper procedural rule by which service of legal

papers must be made upon the Secretary is located in Pa.R.C.P. No.440. Pa.R.C.P. No. 440 (b) states that service of legal papers by mail is complete upon mailing. Accordingly, as Petitioner placed his Petition to Set Aside Candidate's Nomination Petition in the mail to the Secretary of the Commonwealth on March 13,1990, we conclude that service was timely made.

Next, Candidate argues that Petitioner's Petition to Set Aside Candidate's Nomination Petition should be dismissed because the Rule served on Candidate used to provide notice of the time and place of the hearing on Petitioner's objections did not contain the signature of a judge or prothonotary. Per order of this Court, Petitioner was required to serve:

(w)ritten notice of the time and place of said hearing as fixed by this Order, together with a copy of the said petition, if such petition has not previously been served,;... on RALPH ACOSTA, the candidate, or an adult

member of the candidate's family on or before 5:00 P.M., the 16th day of March, 1990.

Notice did not have to be provided to Candidate by an executed Rule. Here, the unexecuted Rule did all that Petitioner was required to do, namely, to serve as written notice of the time and place of the hearing. Consequently, we find Candidate's contention meritless.

Before addressing Petitioner's individual challenges to the nomination petition, Candidate asserts that he was misled by Petitioner's petition as a whole in that the challenges specified in Appendix A of the petition do not correlate with the challenges specified in Appendix B. Specifically, Candidate requests this Court to accept Appendix A. over Appendix B because Appendix A delineates Petitioner's challenges in English text; whereas, Appendix B delineates Petitioner's challenges by a graph with an identification legend. While most of Petitioner's challenges are contained in both appendices, some of the specific

challenges listed in Appendix B are not included in Appendix A. Because Candidate thought that Appendix B was merely a graph of the data contained in Appendix A, Candidate argues that he was misled by Petitioner's appendices inasmuch as he utilized only Appendix A in determining what specific challenges Petitioner was making to certain signatures.

Section 977 of the Code, 25 P.S. §2937, requires that objections to nomination petitions be specifically stated. Courts have interpreted this section to mean that objections must be sufficiently specific to provide notice to a candidate as to the alleged errors in the nomination petition so that the candidate can rebut the allegations at trial. Beynon Appeal.

In this case, the body of Petitioner's Petition to Set Aside Candidate's Nomination Petition lists the general reasons why Candidate's nomination petition should be set aside. With each specific ground, Petitioner alleges

the number of signatures in violation thereof. Petitioner attached two appendices to his petition to specify the exact name being challenged and on what particular ground it was being challenged. Both appendices are self-explanatory and supplement each other. As we find that both appendices together provide adequate notice to Candidate regarding which signatures were being challenged by Petitioner and on what grounds, we refuse to strike Appendix B from Petitioner's petition.

Moreover, we find Candidate's argument that he was misled by Petitioner's appendices without merit. Candidate should have realized that the number of signatures challenged in Appendix A of Petitioner's petition did not correlate with the number of defective signatures alleged in the body of the petition. Such realization should have put Candidate on notice to examine Appendix B for the remaining number of challenged signatures. Accordingly, since both appendices equally

add the required specificity to Petitioner's general objections, we refuse to accept Appendix A as controlling over Appendix B.

A nomination petition for Representative in the House of Representatives requires three hundred valid signatures. In this case, Candidate's nomination petition contained 400 allegedly valid signatures. Petitioner makes the following specific challenges to the signatures on Candidate's nomination petition.

Petitioner first alleges that all of the signatures on Candidate's nomination petition should be held invalid because each circulator's affidavit within the nomination petition was tampered with in that each affidavit was covered with a separate affidavit form. We disagree.

Testimony at trial revealed that each Circulator's affidavit was properly notarized in Philadelphia County by Jose Hernandez. When these sheets were taken to Harrisburg to be filed, Candidate had each sheet re-

notarized by Rose Baker, a notary public in Dauphin County. Candidate had this done because he thought that Hernandez's notarization might be questioned in that Hernandez's notary stamp did not place a box around his notarization information which Candidate thought might be a fatal defect for his nomination petition.

Section 909 of the Code, 25 P.S. §2869, provides in pertinent part:

Each sheet shall have appended thereto the affidavit of the circulator of each sheet, setting forth - (a) that he or she is a qualified elector duly registered and enrolled as a member of the designated party of the State, or of the political district, as the case may be, referred to in said petition.. (b) his residence, giving city, borough or township, with street and number, if any; (c) that the signers thereto signed with full knowledge of the contents of the petitions; (d) that their respective residences are correctly stated therein; (e) that they all

reside in the county named in the affidavit;
(f) that each signed on the date set opposite
his name; and (g) that, to the best of
affiant's knowledge and belief, the signers
are qualified electors and duly registered
and enrolled members of the designated party
of the State, or of the political district,
as the case may be.

Although we have found no case law addressing
this issue, we see no reason why the attached
affidavits would be a fatal defect to Can-
didates's nomination petition. The second
affidavit, as well as the first, contains
all of the information required by Section 909
of the code.

By stipulation, counsel for both parties
agreed that sixteen purported signatures were
not valid.¹ The rest of the challenges by
Petitioner may be separated into nine cate-
gories, which we will address seriatim.

A. Signers not registered as electors

Petitioner presented the testimony and
exhibit of Martha Johnson, custodian of

election records for Philadelphia County, as proof that certain signers were not properly registered. On cross examination, Candidate questioned Ms. Johnson regarding her search of all available election records. Ms. Johnson assured this Court that her search was exhaustive and accurate. Accordingly, we accept Ms. Johnson's testimony and exhibit as credible.

¹Counsel for both parties agreed that the purported signatures identified by reference to the page, side and line of the nomination petition were not valid.

Page 1, Side 2, Lines 36, 48

Page 2, Side 1, Lines 3, 12

Page 2, Side 2, Line 39,

Page 4, Side 1, Line 29

Page 4, Side 2, Line 48

Page 5, Side 1, Line 26

Page 5, Side 2, Lines 31, 32

Page 6, Side 1, Line 19

Page 6, Side 2, Lines 48, 49

Page 7, Side 1, Line 13

Page 8, Side 1, Line 28

Page 9, Side 1, Line 18

To rebut some of Ms. Johnson's findings, Candidate introduced voter registration cards and affidavits from certain signers. Both forms of evidence were objected to by Petitioner as hearsay. Voter registration cards are not proof of one's right to vote. This language is stated directly on the card itself. Additionally, the voter card only relates to the date of issuance and can be invalid if the voter does not vote at least once every two years. Consequently, we will not consider the voter registration cards presented by Candidate.²

The general rule regarding affidavits is that the court in its discretion may allow amendments by the filing of affidavits where the defects are de minimis, technical in nature or otherwise curable. Petition of Thompson, 102 Pa. Commonwealth Ct. 110, 516 A

2d 1278 (1984). In this category, the determination of whether someone is a registered voter at the address stated on the nomination petition is a noncurable fact. and Ms. Johnson's testimony is dispositive. Moreover, Candidate should have had Ms. Johnson check the addresses which some affiants claim were their prior addresses at which they were registered to vote. An affidavit itself is not sufficient to determine whether an affiant was a registered voter at the prior address.

²Candidate appeared to introduce some of the voter registration cards in order to prove that certain signers were properly registered, but at different addresses from the ones stated on the nomination petition. Candidate should have had Ms. Johnson search the election records for these signers under their old addresses to establish that they still are valid voters. Moreover, voter registration cards are not proper devices by which to amend the address of a signer.

Finally, Candidate questions some of Ms. Johnson's searches because, he claims she did not search under the proper spelling of the signers' name. We have examined each of these names as well as the name under which Ms. Johnson searched and conclude that she would have found the elector if anyone with either the signers' first or last name was registered to vote at the given address. Additionally, perfect name searches were not necessary here in that Ms. Johnson searched for the questioned signers under their addresses and not their names. The net result of the challenges under this category is that 85 signatures must be struck from Candidate's nomination petition because they are not registered voters.⁴

³Because we determined that Ms. Johnson searched for one signer by the wrong address, we have found valid the signature at page 3 side 2, line 46.

⁴The following signatures identified by reference to the page, side and line of the nomination petition are not valid because the signers were not registered electors at the time they signed the nomination petition:

Page 1, Side 1, Lines 12, 20, 29

Page 1, Side 2, Lines 32, 37, 38, 40, 41

Page 2, Side 1, Lines 0, 1, 9, 11, 17,
25, 27, 28

Page 2, Side 2, Lines 47, 48, 49

Page 3, Side 1, Lines 1, 2, 7, 8, 11, 13,
14, 15, 18, 19, 20, 22, 26, 27

Page 3, Side 2, Lines 30, 34, 35, 37, 44,
47, 49

Page 4, Side 1, Lines 2, 3, 10, 14, 15,
18, 23, 24, 27

Page 5, Side 1, Lines 7, 11, 23, 27

Page 5, Side 2, Lines 30, 34, 39, 44,
45, 46

Page 6, Side 1, Lines 11, 18

Page 6, Side 2, Lines 30, 42, 45, 50

Page 7, Side 1, Lines 6, 8, 11, 14, 17,
18, 21, 23

Page 7, Side 2, Lines 30, 31, 32, 34, 35, 37, 39

Page 8, Side 1, Lines 16, 17, 21, 25, 27.

B. Signers at bad addresses

Petitioner challenged certain signers as not being registered in the district or as not being registered electors at the address given. Ms. Johnson testified that the addresses of these signers were "bad addresses" in that either they did not exist or that they did not contain enough information for her to search them. Accordingly, these 6 signatures must be struck from Candidate's nomination petition. ⁵

C. Signers not located in the 180th District

Through the testimony and exhibit of Ms. Johnson, Petitioner established that 51 signers of Candidate's nomination petition are located out of the 180th district. ⁶ Accordingly, these signatures must be struck. ⁷

⁵The following signatures identified by reference to the page, side and line of the nomination petition are not valid because the addresses listed therein are nonexistent or do not contain adequate information:

Page 2, Side 1, Line 22

Page 2, Side 2, Lines 30, 32

Page 4, Side 1, Line 13

Page 5, Side 2, Lines 40, 41

⁶We note here that the signatures located on page 5, side 2, lines 48 and 49 are in the 180th district. Ms. Johnson searched these signers by the wrong address.

⁷The following signatures identified by reference to the page, side and line of the nomination petition are not valid because they do not reside in the 180th district:

Page 1, Side 2, Line 43

Page 2, Side 1, Lines 2, 4, 8, 13, 19, 21

Page 2, Side 2, Lines 31, 35

Page 3, Side 1, Lines 6, 28, 29

Page 3, Side 2, Lines 32, 33, 36, 38, 40

Page 4, Side 1, Lines 8, 11, 12, 21, 26, 28

D. Signers registered as Republican or Non-Partisan

Through the testimony and exhibit of Ms. Johnson, Petitioner established that 5 signers of Candidate's nomination petition are registered as Republican or non-Partisan. Accordingly, these signatures must be struck from Candidate's nomination petition.⁸

E. Duplicate signatures

Petitioner challenged that Yolanda Lopez signed Candidate's nomination petition twice, and, therefore, one of the signatures must be struck. Upon examining the signatures in question⁹, we conclude that the petition was not signed by the same individual. Consequently, we reject Petitioner's challenge.

Continued from previous page

Page 4, Side 2, Lines 35,40,42,44

Page 5, Side 1, Line 21

Page 5, Side 2, Lines 37,42,43,50

Page 6, Side 1, Lines 20,21,22,24,27

Page 6, Side 2, Lines 33,34,40,41

Page 7, Side 1, Lines 1, 2, 5, 15,16,19,20

Page 8, Side 1, Lines 18,22,23.

⁸The following signatures identified by reference to the page, side and line of the nomination petition are not valid because the signers are either registered as Republican or Non-partisan:

Page 2, Side 2, Line 38

Page 5, Side 1, Line 29

⁹ Yolanda Lopez's signature is located on the following pages, sides and lines.

Page 8, Side 1, Line 1

Page 8, Side 1, Line 2

F. Illegible names and addresses

Petitioner challenged three signatures and or addresses as so illegible as to preclude verification. We agree with Petitioner's contention. As Candidate did not present any evidence by which we could amend these signatures, we must strike these 3 signatures from Candidate's nomination petition. ¹⁰ Additionally, when Petitioner asked Ms. Johnson to verify certain signatures objected to on other grounds, Ms. Johnson testified that there were 2 addresses which were so illegible as to preclude verification. Therefore, we have placed those signatures in this category and strike them from Candidate's nomination petition. ¹¹

G. Signatures with no date affixed

Numerous signatures were challenged because

no date was listed. Here we allowed affidavits to amend challenged signatures. Furthermore, upon examining the original nomination petition, we found some of the signatures challenged had valid

¹⁰The following signatures identified by reference to the page, side and line of the nomination petition are not valid because they are illegible:

Page 2, Side 1, Line 12

Page 2, Side 2, Line 46

Page 7, Side 1, Line 4

¹¹Addresses which Ms. Johnson testified were so illegible as to preclude verification are identified as follows by reference to the page side and line of the nomination petition:

Page 4, Side 1, Lines 16, 19

dates affixed. Accordingly, we do not have to strike any signatures from Candidate's nomination petition on this ground.

H. Signatures with no county specified

Petitioner first challenged certain signatures because the county of Philadelphia was written onto the nomination petition by another hand. We determined that the specification of a county was an amendable defect, and, as such, we would allow the alteration.

Petitioner next challenged a different group of signatures which had no county affixed at all. Petitioner now argues that since Candidate did not amend these signatures with testimony at trial or with affidavits, we must strike them from the nomination petition as invalid. We disagree.

Section 908 of the Code, 25 P.S. §2868, provides in pertinent part that each signer must add his residence to his signature, giving city, borough or township "(p)rovided, however,(t)hat if the said political district named in the petition lies wholly within any city, borough or township, or is coextensive with same, it shall not be necessary for any

signer of a nomination petition to state therein the city, borough or township of his residence." Because in this case, Candidate's district falls within Philadelphia, County which is comprised only of the city of Philadelphia, we conclude that it was unnecessary for signers to include Philadelphia County as their city, borough or township. Accordingly, we refuse Petitioner's request to strike any signatures under this challenge.

I. Signatures with no occupation listed

Petitioner challenged four signatures on the basis that the signer did not list his occupation. Three of these signatures have already been struck on other grounds. In regards to the one signature still challenged, Section 977 of the Code, 25 P.S. §2937, provides that the trial court, in its discretion, may permit amendment of defects apparent on the face of a nomination petition, and the failure to list an occupation qualifies as such. Some evidence, however,

must be presented upon which the trial judge may base his discretion in granting such an amendment.

Elliott Nomination Petition, 26 Pa.Commonwealth Ct. 20, 362 A.2d 438, affirmed, 466 Pa. 463, 353 A.2d 446 (1976). As Candidate in this case did not present any evidence regarding this signer's occupation, we cannot permit amendment, and this signature must be struck from the nomination petition. 12

In conclusion, we have then the following tally:

Total number of signatures on petition	400
Less Total signatures struck	<u>169</u>
REMAINING VALID SIGNATURES	231

Because the remaining valid signatures are less than the required number of 300, we are compelled to declare Candidate's nomination

¹²The following signature identified by reference to the page, side and line of the nomination petition is not valid because the signer did not list his occupation:

Page 3, Dise 1, Line 25

petition, as it now stands, invalid.¹³ Candidate, however, requests this Court to allow him to amend his nomination petition nunc pro tunc and include 644 signatures which he claims were not filed with the Secretary of the Commonwealth on the advice of Rose Baker, a notary public. Candidate argues that because he relied on the misrepresentation of a state officer, he should be allowed to amend nunc pro tunc.

In Fairview Associates, Inc. Appeal, 61 Pa. Commonwealth Ct. 404, 433 A.2d 929 (1981), this Court held that a court may allow amendment of a candidate's defective nomination petition only when the candidate's defective petition is the result of that candidate's reasonable reliance on a representation, misrepresentation or mistake by an employee or representative of the Board of Election. Rose Baker while admittedly a notary public, is not employed by the Board of Elections. To rely on the advice of someone not associated with the Board of Elections was a costly mistake

on the part of Candidate and one we cannot allow to be amended at this point.

¹³We note here that Petitioner also challenged the circulator's affidavit on page 9 of the nomination petition. At trial, Candidate admitted that Letty Able's signature on the circulator affidavit on page 9 was not hers. Candidate then presented the testimony of James Flanagan in order to qualify him as a cocirculator and moved to amend the circulator's affidavit on page 9, replacing Mr. Flanagan's name for Ms. Able's name. Because we have already determined that Candidate's nomination petition must be struck as containing less than the 300 valid signatures required, we need not address this challenge.

Accordingly, Candidate's request to amend his nomination petition is denied, and Petitioner's Petition to Set Aside Candidate's Nomination Petition is hereby granted.

IN RE: NOMINATION PETITION OF :
 RALPH ACOSTA AS DEMOCRATIC :
 CANDIDATE FOR OFFICE OF MEMBER :
 OF THE GENERAL ASSEMBLY FOR THE :
 180th DISTRICT, :
 :
 HENRY T. KANE, :
 PETITIONER :

: IN THE COMMONWEALTH COURT
 : OF PENNSYLVANIA
 :
 : No. 103 Misc. Dkt. 1990

O R D E R

AND NOW, this 12th day of April, 1990,
 the Nomination Petition of Ralph Acosta as
 candidate for the Democratic Nomination as
 Representative District of Philadelphia
 County is hereby set aside as containing
 less than the 300 valid signatures
 required. The Prothonotary is directed to
 notify forthwith the parties and also to
 certify and forward a copy of this order to
 the Secretary of the Commonwealth of
 Pennsylvania.

Costs of this suit are hereby assessed
 against Ralph Acosta.

CERTIFIED FROM THE RECORD

AND ORDER EXIT

APR 12 1990

C R Hostutter

Deputy Prothonotary Chief Clerk

Alexander F. BARBIERI,

SENIOR JUDGE

SUPREME COURT OF PENNSYLVANIA

EASTERN DISTRICT

MARLENE F. LACHMAN, ESQ
PROTHONOTARY
PATRICK TASSOS
DEPUTY PROTHONOTARY

468 CITY HALL
PHILADELPHIA, PA. 19107
(215) 560 6370

APRIL 19, 1990

ROBERT J. MULIGAN ESQUIRE
4800 Larchwood Avenue
Philadelphia, PA 19143-2027

IN RE NOMINATION PETITION OF RALPH ACOSTA
AS DEMOCRATIC CANDIDATE FOR OFFICE OF
MEMBER OF THE GENERAL ASSEMBLY FOR THE
180th DISTRICT
PETITION OF: STATE REPRESENTATIVE
RALPH ACOSTA
NO.69 E.D. MISCELLANEOUS DOCKET 1990

Dear Counsel:

This is to advise you that the attached
Order has been entered in the above
captioned matter.

In addition, please be advised that
pursuant to the attached Order, all parties
are directed to immediately file their briefs.

Please be advised that all briefs
are to be filed in the Philadelphia
Office.

You will be notified at a later date
of the exact date of oral argument.

Very truly yours,

PATRICK TASSOS
Deputy Prothonotary

/ mz
Enclosure
cc: Terrence J. Schade, Esquire
Mrs. Mildred E. Williamson,
Deputy Prothonotary
Supreme Court of PA- Middle District

IN THE SUPREME COURT OF PENNSYLVANIA
Eastern District

IN RE: NOMINATION PETITION OF :
RALPH ACOSTA AS DEMO - : No. 69
CRATIC CANDIDATE FOR :
OFFICE OF MEMBER OF : E. D.
THE GENERAL ASSEMBLY : Misc.
FOR THE 180th DISTRICT :
: Dkt. 1990

Petition of State Representative
Ralph Acosta

O R D E R

PER CURIAM:

AND NOW, this 18th day of April, 1990,
the matter is to be listed for argument
during the session of Court commencing
May 7, 1990, in Harrisburg; a stay is
granted pending decision in this matter
and parties are directed to immediately
file their briefs.

TRUE COPY FROM RECORD

Attest: 4/19/90

PATRICK TASSOS

Deputy Prothonotary, Supreme Court of
Pennsylvania, Eastern District

SUPREME COURT OF PENNSYLVANIA

MIDDLE DISTRICT

MILDRED E. WILLIAMSON
DEPUTY PROTHONOTARY

434 Main Capitol
Building
P.O. Box 624
Harrisburg,
Pennsylvania
17108
(717) 787-8181

May 10, 1990

Robert J. Mulligan, Esquire
4800 Larchwood Avenue
Philadelphia, Pa. 19143- 2027

RE: IN Re: Nomination Petition of Ralph
Acosta as Democratic Candidate for Office of
Member of the General Assembly for the
180th District, Henry T. Kane, Petitioner
Appeal of Ralph Acosta
No. 63 M.D. Appeal Docket, 1990

Dear Mr. Mulligan:

Enclosed please find certified copy of
Order dated May 10, 1990 for the above -
captioned matter.

Very truly yours,

Mildred E. Williamson
Deputy Prothonotary

MEW / sjp

xc: Honorable Alexander F. Barbieri
Terrence J. Shade, Esq.
Herbert W. Salus, Jr., Esq.
William P. Boehm, Commissioner
Isadore A. Shrager, Esq.
Ira B. Shrager, Esq.

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

IN RE:

NOMINATION PETITION OF :
RALPH ACOSTA AS DEMOCRATIC :
CANDIDATE FOR OFFICE OF :
MEMBER OF THE GENERAL ASSEMBLY :
FOR THE 180th DISTRICT :
HENRY T. KANE, Petitioner :
:
PETITION OF RALPH ACOSTA :

: No. 63 Middle District Appeal Docket 1990
:
: Appeal from the Order of the Commonwealth
: Court at No. 103 Misc. Dk. 1990
: dated April 12, 1990.
:
: ARGUED: May 7, 1990

ORDER OF COURT

PER CURIAM: Filed: May 10, 1990

The decision of the Commonwealth Court is
reversed. Opinion to follow.

Mr. Justice McDermott did not participate
in the consideration or decision of this
matter.

Judgement entered:

Mildred E. Williamson Deputy Prothonotary

